#### LU-24-141

## <u>AMENDED</u> <u>APPLICATION OF HOGSWAVE, LLC</u> <u>913 Sagamore Avenue, Portsmouth, NH</u> <u>Map 223, Lot 27</u>

#### **APPLICANT'S NARRATIVE**

#### I. <u>THE PROPERTY</u>:

The applicant, Hogswave, LLC, owns the property located at 913 Sagamore Avenue, upon which there currently exists a single family dwelling and two accessory outbuildings. The LLC's principal, Heidi Ricci, owns the property next door at 912 Sagamore Avenue, which has been her family's primary residence since 2015.

The 913 Sagamore property is large, irregularly "L-shaped" parcel that is actually set off from the main travel way by two properties. It is bounded to the south by Sagamore Creek. The northern portion of the property is wetlands. As noted, there are two existing outbuildings on the property and a single-story dwelling. It is in the Waterfront Business district. The existing dwelling is a pre-existing non-conforming use in this zone, however, four of the six lots bounded by the property have residential uses. The property has no frontage on Sagamore Avenue but is accessed by a private shared driveway that connects to it.

When the applicant acquired 913 Sagamore in November of 2019, between this lot and 912 Sagamore, there were five boat rentals total on both docks combined. The applicant has increased/upgraded the dock space on each lot to accommodate eight boats total on each dock, for a total of 16 boats between the two docks, which the applicant has leased to both commercial fishermen and recreational mariners. The applicant has thus had a demonstrable impact in advancing the purposes of the Waterfront Business district by encouraging and supporting business uses that depend on the water resource. The applicant wishes to continue and support and expand this endeavor by offering additional Waterfront Business services and desires to replace the existing 750 square foot utility shed furthest from the creek with a new 1,000 square foot "boathouse" structure which will include an apartment above and storage of waterfront business items such as trailers, floats, lines, etc. on the ground floor. The applicant also seeks to rebuild the pre-existing 960 SF dwelling on approximately same footprint, with a vertical expansion that will increase the square footage to approximately 1,840 square feet<sup>1</sup>. It is the applicant's experience that residential use is necessary to support the water-dependent business uses along the creek and this project will permit the applicant to continue to do so.

<sup>&</sup>lt;sup>1</sup> The exact size and dimensions of the proposed expanded dwelling will be subject to the applicant obtaining a Conditional Use Permit from the Planning Board, as well as a NH DES Wetlands Permit.

The Ricci's intend to move into the newly expanded pre-existing dwelling as their primary residence. The new structure replacing the utility shed will have a 1,000 square foot footprint, and the increase in coverage will not in any way overcrowd this lot, which exceeds three acres. It will replace the existing outbuilding in the similar location. Because the pre-existing, non-conforming dwelling sits in close proximity to the water, the proposed expansion required a review by the Conservation Commission which was unanimously approved on October 9, 2024. The applicant will also require a conditional use permit from the Planning Board, as well as a Wetlands Permit from the NH DES.

The proposal requires variances from the following provisions of the ordinance:

- 10.531 to allow frontage of 0 feet where 100 is required;
- 10.334 to allow a nonconforming residential use to be extended into another part of the remainder of the lot; and
- 10.331 to allow a lawful nonconforming residential use to be extended or enlarged.

## II. <u>THE VARIANCES</u>:

The Applicant believes all criteria necessary to grant the requested variances are met.

<u>Granting the requested variances will not be contrary to the spirit and intent</u> of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to <u>Malachy Glen</u> <u>Associates v. Chichester</u>, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

The essential characteristics of the neighborhood would not be altered by these variances. Residential use currently exists on this lot and on most of those that abut it, notwithstanding the preclusion of such use under the ordinance. A second apartment dwelling on a lot that is more than seven times the minimum lot size, which will replace an existing outbuilding in the similar location, will not have any impact on the essential characteristics of the neighborhood. The expansion of the existing dwelling is likewise consistent with the essential characteristics of the neighborhood.

As noted above, the proposed expansion of the existing dwelling will require further review by multiple municipal and state authorities, further assuring that the public health, safety and welfare will be adequately addressed and protected. <u>Substantial justice would be done by granting the variance</u>. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property.

In this case, there is no benefit to the public in denying the variances that is not grossly outweighed by the hardship upon the owner. The lack of frontage is a pre-existing condition that cannot be remedied. The project will also introduce a much-needed additional unit to the City's inadequate housing stock. The expansion of residential use on a very large lot that already has such use and is surrounded on three sides by lots with residential use is necessary to support the expanded waterfront business use.

#### Values of surrounding properties will not be diminished.

The proposed second dwelling and the expansion of the existing dwelling will be new, code-compliant construction and will include the introduction of associated landscaping and site improvements. The existing outbuilding is somewhat substandard and will be removed. The values of properties in the vicinity will be enhanced.

<u>There are special conditions associated with the property which prevent the</u> <u>proper enjoyment of the property under the strict terms of the zoning ordinance</u> <u>and thus constitute unnecessary hardship</u>. The property is clearly unique. It has no frontage on Sagamore Avenue but is accessible through a private driveway. It is surrounded on three sides by properties with residential uses despite such use being prohibited in the Waterfront Business zone. It is unusually large, more than three acres, and is bounded by the creek to the south and a sizeable amount of wetlands to its north. It has a pre-existing, non-conforming dwelling entirely within the tidal wetlands buffer.

<u>The use is a reasonable use</u>. The property has had residential use on it since at least 1970 according to City tax records. The surrounding properties have residential uses on them as well. The lot is clearly large enough to support a second dwelling designed to support the ongoing water-related business activities.

<u>There is no fair and substantial relationship between the purpose of the</u> <u>ordinance as it is applied to this particular property</u>. The frontage requirement cannot be met on this property. The prohibition against residential use cannot be applied to the pre-existing dwelling on the property, but that dwelling cannot be expanded and modernized without zoning relief. Rigid application of the ordinance in this instance would do nothing to promote purposes of the Waterfront Business district. Accordingly, the proposed use requested here would not in any way frustrate the purpose of the ordinance and there is no fair and substantial relationship between the purpose of the ordinance and its application to this property.

## III. Conclusion.

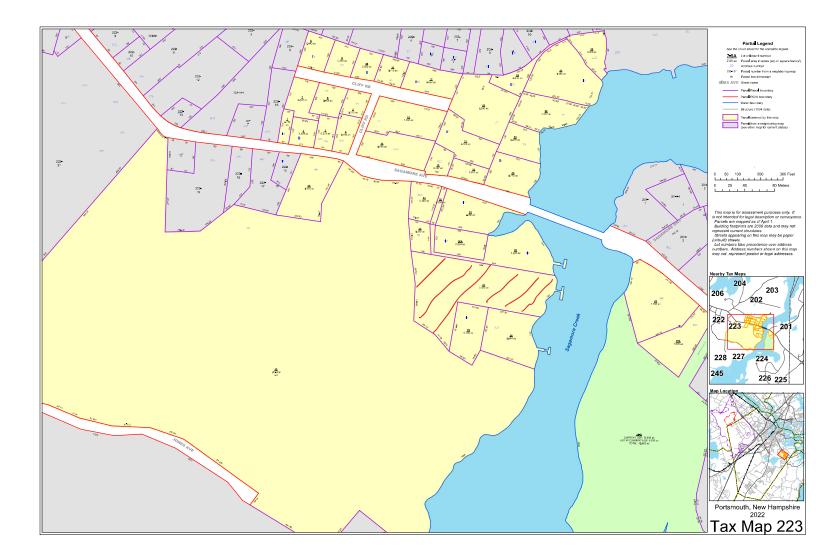
For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

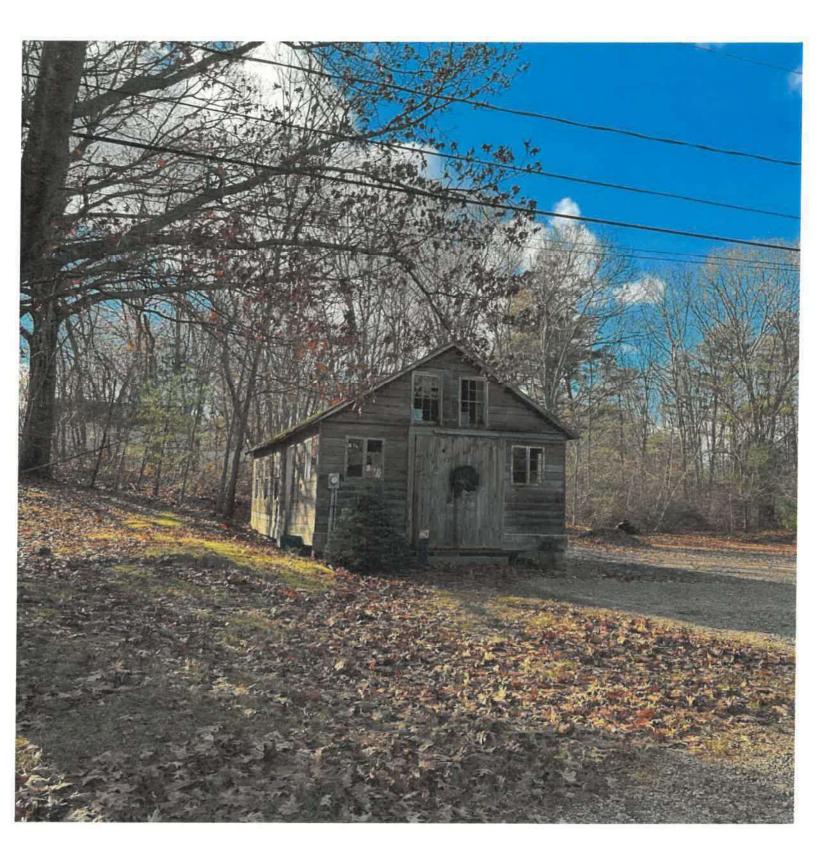
Dated: October 15, 2024

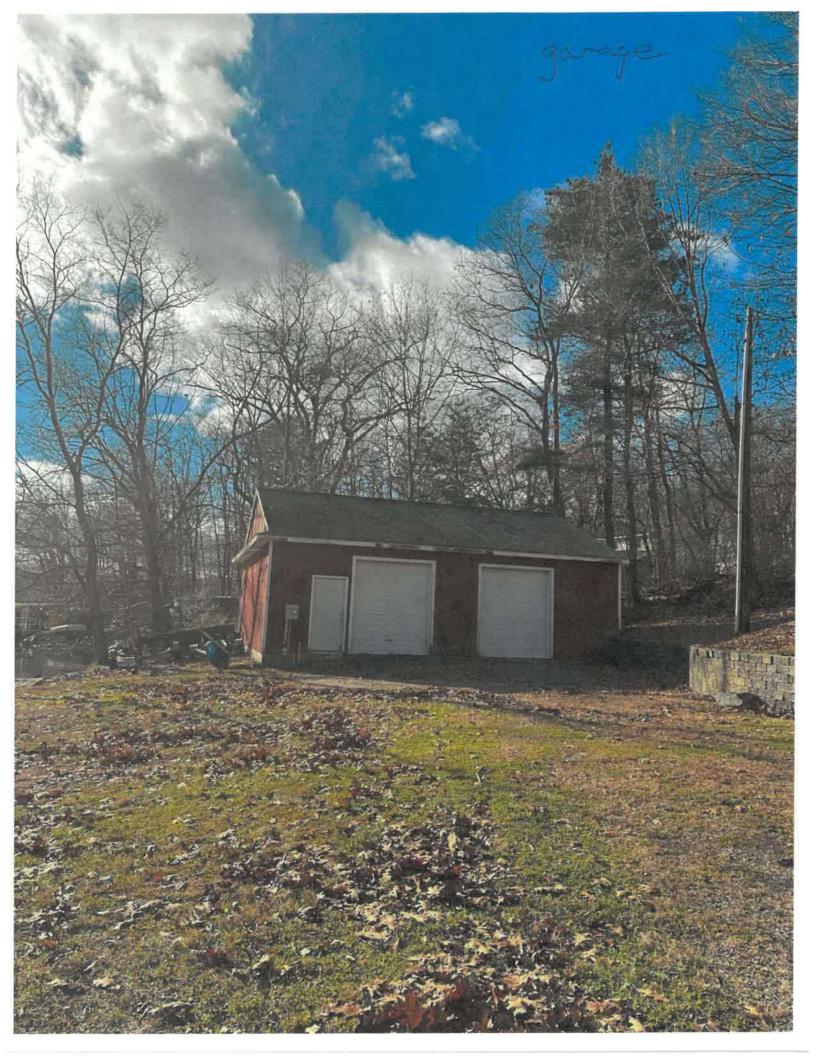
By:

John K. Bosen John K. Bosen, Esquire



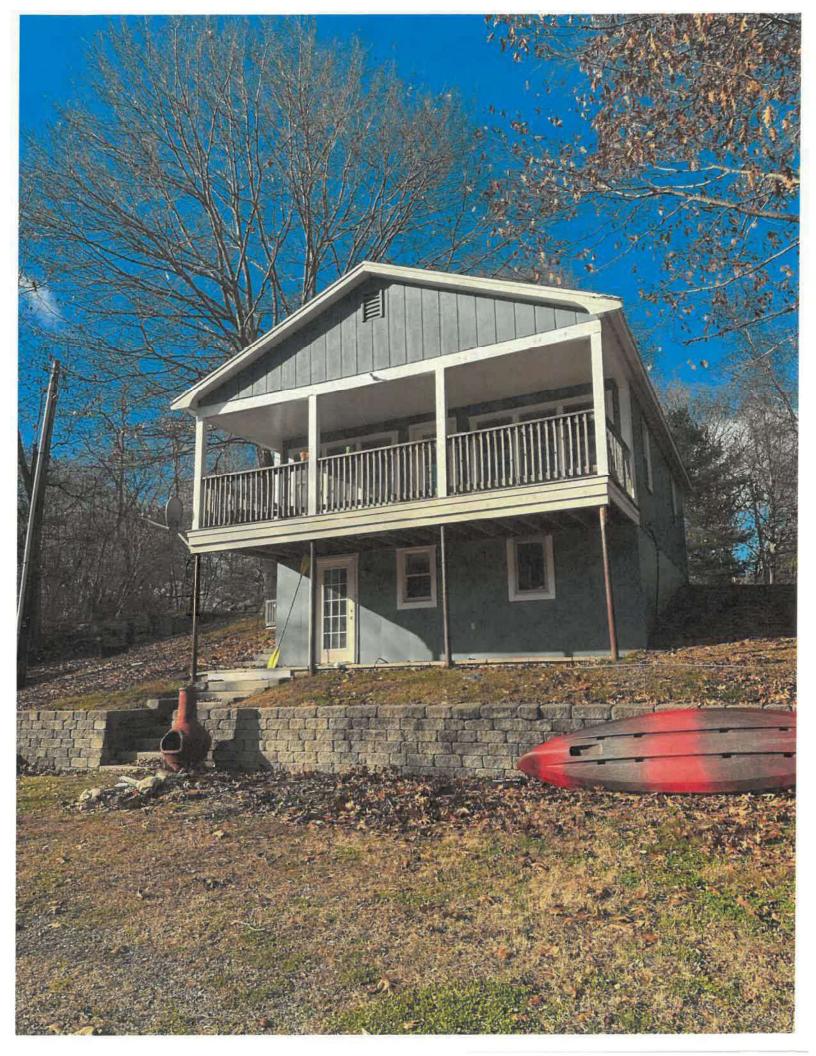
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dwelling







**CITY OF PORTSMOUTH** 

Planning Department 1 Junkins Avenue Portsmouth, New Hampshire 03801

(603) 610-7216

## **CONSERVATION COMMISSION**

October 11, 2024

Hogswave LLC. 912 Sagamore Avenue Portsmouth, New Hampshire 03801

RE: Wetland Conditional Use Permit application for property located at 913 Sagamore Avenue, Portsmouth, NH. (LU-23-141)

Dear Property Owner:

The Conservation Commission, at its regularly scheduled meeting of Wednesday, October **9**, 2024, considered your application for a Wetland Conditional Use Permit for the demolition of an existing residential structure and the construction of a new home, reconfiguration of the existing gravel driveway, the addition of a pervious paver patio, deck, removal of impervious surfaces, reconstruction of a retaining wall, grading, utility connections and landscaping. The existing conditions within the 100' wetland buffer include a one-story residential structure with 1,110 s.f. of impact and approximately 900 s.f. of impervious pavement. This application proposes the removal of the 1,110 s.f. of building impact within the buffer and the removal of 900 s.f. of pavement. The applicant is proposing to permanently impact approximately 7,727 s.f. of the 100' wetland buffer, compared to the existing condition of 7,743 s.f. of permanent impact. Said property is shown on Assessor Assessor Map 223 Lot 27 and lies within the Waterfront Business (WB). As a result of said consideration, the Commission voted to **recommend approval** of this application to the Planning Board with the following stipulations:

1. The proposed Northern Red Oaks should be at least of 2" caliper sizing.

2. The Conservation Commission recommends that the applicant follow NOFA standards on the site: https://nofaolc.wpenginepowered.com/wp-

content/uploads/2019/10/nofa\_organic\_land\_care\_standards\_6thedition\_2017\_opt.pdf

3. Wetland boundary markers shall be permanently installed prior the start of construction in locations noted on plan set.

This matter will be placed on the agenda for the Planning Board meeting scheduled for **Thursday, December 19, 2024.** One (1) hard copy of any revised plans and/or exhibits as well as an updated electronic file (in a PDF format) must be filed in the Planning Department and uploaded to the online permit system no later than Wednesday, November 27, 2024.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Barbara Mi Millon

Barbara McMillan, Vice-Chair Conservation Commission

cc:

John Chagnon, Project Manager, Haley Ward

